

ESTTA Tracking number: **ESTTA412426**

Filing date: **06/02/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	EMD Crop BioScience Inc.
Granted to Date of previous extension	06/03/2011
Address	13100 West Lisbon Avenue Suite 600 Brookfield, WI 53005 UNITED STATES
Correspondence information	Edward M. Prince Alston & Bird LLP 950 F Street, NW The Atlantic Building Washington, DC 20004 UNITED STATES edward.prince@alston.com Phone:202-239-3358

Applicant Information

Application No	77942162	Publication date	01/04/2011
Opposition Filing Date	06/02/2011	Opposition Period Ends	06/03/2011
Applicant	Cleary Chemicals, LLC P.O. Box 10 1049 Route 27 Sommerset, NJ 088750010 UNITED STATES		

Goods/Services Affected by Opposition


Class 005. All goods and services in the class are opposed, namely: Fungicides for agricultural use; Fungicides for domestic use

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3511124	Application Date	10/19/2007
Registration Date	10/07/2008	Foreign Priority Date	NONE
Word Mark	TORQUE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2007/06/25 First Use In Commerce: 2007/06/25 Natural molecule or bacteria for plant growth enhancement in agriculture crops

Attachments	77308151#TMSN.jpeg (1 page)(bytes) Notice of Opposition - TORQUE.pdf (4 pages)(94942 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Edward M. Prince/
Name	Edward M. Prince
Date	06/02/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

EMD Crop BioScience, Inc.,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
Cleary Chemicals, LLC,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

In the matter of the application for registration of the mark TORQUE, Ser. No. 77/942,162, filed February 23, 2010, by Cleary Chemicals, LLC, and published for opposition on February 23, 2010, EMD Crop BioScience, Inc., a Delaware corporation, having its principal place of business at 13100 West Lisbon Avenue, Suite 600, Brookfield, WI 53005, by its attorneys, Alston & Bird LLP, 950 F Street, NW, The Atlantic Building, Washington, DC 20004, believes it would be damaged by such registration and hereby opposes said application.

The grounds for opposition are as follows:

1. EMD Crop BioScience Inc. and its predecessors (hereinafter collectively referred to as “Opposer”) are manufacturers of chemical and biochemical preparations for use in the agriculture and horticulture fields, including natural and artificial manure for the earth, fertilizers, plant growth inoculants and bacteria plant growth promoters and enhancers to improve plant health and enhance growth of agriculture and horticulture crops.

2. Since long prior to the filing date of the intent-to-use application opposed herein, opposer has used the mark TORQUE for one of its plant growth enhancement products – namely, natural molecule or bacteria for plant growth enhancement in agriculture crops (hereinafter “opposer’s goods”) and is the owner of United States Registration No. 3,511,124 for the mark TORQUE for natural molecule or bacteria for plant growth enhancement in agriculture crops, a copy of which is attached.

3. On information and belief, Cleary Chemicals, LLC (hereinafter “Applicant”) is a manufacturer of chemical preparations for use in agricultural and horticultural fields including fungicides.

4. On information and belief, applicant has adopted the mark TORQUE for fungicides and has filed an intent-to-use application on the mark TORQUE for fungicides for agricultural use and fungicides for domestic use.

5. On information and belief, applicant made no use of the mark TORQUE prior to the filing date of its application, namely, February 23, 2010.

6. On information and belief, applicant has made no use of the mark TORQUE prior to (a) the filing date of opposer’s application, namely, October 19, 2007 and (b) the issue date of opposer’s Registration No. 3,511,124 - namely, October 7, 2008.

7. On information and belief, applicant is now using the mark TORQUE for fungicides for agricultural use.

8. On information and belief, applicant is now using the mark TORQUE for fungicides for domestic use.

9. On information and belief, applicant's fungicides are compatible with, and can be used in conjunction with, plant growth enhancement products.

10. On information and belief, applicant's fungicides are compatible with opposer's natural molecule or bacteria for plant growth enhancement in the agriculture crops.

11. On information and belief, applicant's fungicides are sold through distributors who also handle plant growth enhancement products.

12. Opposer's chemical and biochemical products, including opposer's goods sold under the mark TORQUE, are distributed through Ag distributors also handling applicant's fungicide products.

13. On information and belief, applicant's goods and opposer's goods are sold or are likely to be sold through the same channels of trade and by the same distributors and/or to the same end customers.

14. On information and belief, Crop Production Services, Loveland Product Division, is a customer of applicant's TORQUE fungicides.

15. On information and belief, Wilber Ellis is a customer of applicant's TORQUE fungicides.

16. On information and belief, Cardinal Chemical is a customer of applicant's TORQUE fungicides.

17. On information and belief, Simplot is a customer of applicant's TORQUE fungicides.

18. On information and belief, Van Diest Supply Company is a customer of applicant's TORQUE fungicides.

19. On information and belief, Helena Chemical is a customer of applicant's TORQUE fungicides.

20. Turf use restrictions and precautions on applicant's TORQUE fungicide label include warnings reading in part "Do not use on home lawns, Not for homeowner use, and Do not use clippings for animal feed."

21. Opposer is damaged or will be damaged by the sale or offering for sale of applicant's goods bearing the mark TORQUE since applicant's mark, as used in connection with applicant's goods, falsely suggests a connection with opposer's goods and/or falsely suggests that applicant is associated with, or sponsored by, opposer.

22. The mark TORQUE so resembles opposer's mark TORQUE, previously used in interstate commerce by opposer, and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake or to deceive.

Wherefore, opposer demands that the opposition be sustained and that the trademark covered by the above-identified application of applicant be refused registration.

Respectfully submitted,

EMD Crop BioScience, Inc.
By Its Attorneys

ALSTON & BIRD LLP

By: _____
Edward M. Prince

Date: June 2, 2011